

**DEPARTMENT OF STATE REVENUE**

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LETTER OF FINDINGS NUMBER: 93-0084 ST

Sales And Use Tax

For The Periods: 1987 Through 1989

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**ISSUE**

**I. Sales & Use Tax — Computer Software**

**Authority:** Sales Tax Division Information Bulletin #8

Taxpayer protests the imposition of sales/use tax on their leasing of computer software.

**STATEMENT OF FACTS**

Taxpayer is a software development and insurance services company headquartered in South Carolina. Taxpayer provides software and related services to insurance companies in Indiana, specifically ABC Co. Taxpayer did not collect sales tax on the fees paid by ABC for use of taxpayer's computer program. Additional relevant facts will be presented below, as necessary.

**I. Sales & Use Tax — Computer Software**

**DISCUSSION**

Taxpayer protests the imposition of sales tax on the fees collected from ABC. Taxpayer first claims that it relied in good faith on a Report of Disposition from the Indiana Department of Revenue which found ABC's purchase of computer software was not subject to tax as the software was custom. In a letter to taxpayer from ABC's Assistant General Counsel, dated January, 1986, ABC referred to past rulings from the Department (including the above-referenced Report of Disposition and prior audits) which found ABC's software purchases exempt from sales tax. Sales Tax Division Information Bulletin #8, dated February 9, 1990, states in pertinent part:

As a general rule, transactions involving computer software are not subject to Indiana Sales or Use Tax provided the software is in the form of a custom program specifically designed for the purchaser. Emphasis original.

Taxpayer claims the software leased to ABC was specifically designed for that customer. Taxpayer states the first licensing agreement with ABC included a provision for taxpayer to perform a "requirements study" for the purpose of determining the type of system ABC required. Taxpayer states many visits by ABC to its location to discuss ABC's needs as well as several on-site visits by taxpayer's employees were necessary to create and modify the software program at ABC. Taxpayer also supports a claim of custom software by stating that ABC was not able to use taxpayer's standard upgrades as ABC's programs had been so extensively modified.

Alternatively, taxpayer argues that at the time of the assessment period the above-referenced information bulletin had not been published. Indeed, the information bulletin in effect at the time of the assessment period, dated October 1, 1981, stated in pertinent part:

To be considered exempt "software" one of the following elements must be present:

(a) The preparation of the software requires an analysis of the customer's requirements by the vendor...

Taxpayer argues that under either information bulletin the software leased to ABC was custom, not canned, as extensive analysis and modification was required to create a software capable of fulfilling ABC's needs.

**FINDING**

Taxpayer's protest is sustained. Taxpayer has proven to the Department's satisfaction that the software leased to ABC was custom, not canned.